

STATEMENT OF GILLIAN SORENSEN

NEW YORK CITY COMMISSIONER FOR THE
UNITED NATIONS AND CONSULAR CORPS

BEFORE THE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE
ON INTERNATIONAL OPERATIONS

HOUSE OF REPRESENTATIVES

H.R. 3036

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Mr. Chairman, members of the Committee, I am Gillian Sorensen, New York City's Commissioner for the United Nations and Consular Corps. I appear here today with my Deputy Commissioner and Legal Counsel, Barry Koch, pursuant to Chairman Mica's invitation to provide the Commission's views on H.R. 3036, a bill "To provide redress for crimes committed by diplomats in the United States, and for other purposes."

I would like to thank the Committee for inviting my participation. The City of New York is host to the largest diplomatic and consular communities in the world, and has a keen interest in discharging its "Host City" obligations effectively and in accordance with domestic and international legal obligations. We have, together with the City's police department, the Criminal Justice Coordinator and the Mayor, analyzed H.R. 3036 and are prepared to address certain specific areas of the bill. I would like first, however, to make some general remarks.

The Commission has, since 1962, represented the Mayor as official liaison between the City of New York and the diplomatic community. The Commission is principally a service and problem-solving agency that responds to the needs of some 35,000 foreign diplomats, consular officers, United Nations officials, their staffs and families. We respond as well to the needs of New York City agencies and citizens who deal with diplomatic offices and personnel. We try to reduce the burdens and problems presented by the presence of the diplomatic community by serving as an information source, complaint bureau, and discreet and impartial mediator. The Commission is an apolitical agency that deals with every country represented at the U.N., including those that have no diplomatic relations with Washington. We are accountable to the Mayor, and not to the United States Department of State, although we do work periodically with the State Department on various matters.

I would state formally at the outset that we believe that immunity is indeed essential to the conduct of diplomatic relations. It protects almost 30,000 Americans and their families posted overseas. Congressman Solarz, in an earlier statement concerning this bill, stated wisely that

Everyone in this room today accepts the proposition that U.S. diplomats stationed abroad need the protection offered by the Vienna Convention. Indeed, because of the inadequate nature of many judicial systems overseas, our diplomats rely on the protection offered by diplomatic immunity far more than foreign diplomats serving in the United States.

Diplomatic immunity was never intended, however, to serve as a shield from justice or a license to violate our laws.

This Committee has been considering what Congressman Solarz referred to as "a truly troubling situation--the abuse of the system of diplomatic immunity, and the almost total inability of the victims of crimes committed by persons protected by diplomatic immunity to seek redress." Certainly we have an obligation to respond appropriately to abuses of this system. Likewise, we have a responsibility to address the perception--sensationalized by the media--that diplomats are literally "getting away with murder" and that our government is insensitive to the problem, due to its pursuit of larger foreign policy objectives.

At the same time, however, we must look to the facts if we are to make a responsible assessment of the problem.

In examining the precise nature of the crime problem, we direct attention to the "Study and Report Concerning the Status of Individuals with Diplomatic Immunity in the United States", prepared by the U.S. Department of State, March 18, 1988. Exhibits B-2(a), (b) and (c) list 44 cases in New York where diplomats were alleged to have committed a crime, during the 5-1/2 year period, 8/1/82 through 2/29/88. Thirteen of these cases involved assault allegations, but 6 of the 13 were family disputes or quarrels between diplomats; and at least 10 of these cases involved non-violent misdemeanors. We would point also to Exhibit A-2 of the Study and Report, "Special Cases--Unpaid Debts" (Missions to the United Nations). A careful analysis of these statistics must lead, we believe, to the following conclusions:

--The incidence of abuse of immunity from jurisdiction--both criminal and civil--is extremely low;

--The majority of diplomats and their family members are honorable and law-abiding people;

--Only a relative handful of irresponsible persons and Missions have taken advantage of the system.

Nevertheless, there is certainly a need to pursue this relative handful, and we believe the bill offers several valuable improvements to the ability to do so. We wish to express our support for and agreement with much of what the bill seeks to address. We will indicate where we foresee certain practical problems or adverse reciprocity consequences. We will now address the specific sections of the bill.

Victims Compensation

We do not oppose section 2, which would amend the federal Victims of Crime Act of 1984. We note, however, that the amendment would not affect the Victim's Compensation program currently in place in New York State. Other than creating uniform eligibility requirements among the states which currently have Victims Compensation programs, the amendment would not increase federal funds available for such state programs and would not provide any federal funds for victims injured in states without such programs. To that extent, it does not really "provide [additional] redress for crimes committed by diplomats." We would, therefore, urge continued efforts be made toward exploring other possible sources of relief. These might include a federal indemnification fund or some other type of Treasury appropriation. We, too, believe, as stated by Ambassador Roosevelt, the U.S. Chief of Protocol, in her March 30, 1988 testimony before this Committee, that

[T]he beneficiary of diplomatic immunity fundamentally is the United States Government because United States diplomatic personnel abroad could not function without immunity. Thus, uncompensated crimes are a necessary cost of the conduct of foreign relations, and it is reasonable for the United States Government to bear this cost.

We note the Department of State's conclusion that "the funding required for such a program would be relatively modest."

We note also Ambassador Roosevelt's statement that the Department of State "makes a great effort to secure compensation [for victims,] and has been involved in securing ex gratia payments by foreign governments to injured parties." Since certain sections of the bill seek to establish reporting requirements, we would suggest that the Committee consider adding to this section a reporting requirement similar to that contained in section 3,

so that there will be a permanent record of the efforts exerted by the Department of State toward this end, and the success or failure of these efforts. We believe an injured party would have a keen interest in the details of such efforts exerted on his behalf.

Record-keeping and Reporting

We support the record-keeping and reporting requirements of section 3(a). We would point out, however, that there is no requirement that the record include a description of the disposition of the incident; we recommend that section 3(a) be amended to include such a requirement. We also note that there is no mention whether this report is to be made available to the public. While we believe that public disclosure of the identities of individual diplomats might be unwise, we suggest that the other information should be available to the public. In addition, we recommend that a record be kept of all instances where allegations of criminal conduct by a diplomat are investigated, and it is concluded that the allegations are unfounded. We have noted several instances where the press continues to refer to thinly supported allegations, resulting in the besmirching of an innocent individual's reputation. One notable example involves the 1981 case where a pedestrian was struck and killed by an automobile operated by the son of a diplomat. The press account typically refers to how the driver got away with murder by virtue of his diplomatic immunity. The fact is that diplomatic immunity was not invoked, the diplomat's son and the sending government cooperated fully with the police in their investigation, and after a full investigation the police ruled the incident an accident or suicide and declined to prosecute.

We note that the term "serious criminal offense" is not defined. We recommend that the term be defined to include all felonies under the law of the jurisdiction where the act occurred, all incidents of reckless driving or driving while intoxicated, and such other offenses as the Secretary may deem to be serious criminal offenses.

We strongly support Ambassador Roosevelt's proposal to include information concerning "delinquency in the payment of debts owed by foreign missions and members of such missions and their families", which remain outstanding for six months or more. We recommend that section 3(a) be amended to add such a formal record-keeping and reporting requirement. In this connection, we would support language establishing a minimum set of procedures to be followed by the State Department when pursuing such debts. We have witnessed in New York, although it is clearly the rare case, debt matters that were not pursued as aggressively as they might have been, due to various political considerations.

We believe this type of report should be publicly available and that the public has a right to know who the delinquent governments are.

Finally, we would like to address a point raised by the State Department in its Study and Report and in its testimony to this Committee concerning the availability of the Foreign Sovereign Immunities Act of 1976 as an avenue of possible recourse to creditors and other individuals with tort claims (such as persons injured in automobile accidents) against a foreign mission. Although such citizens do have a legal right to pursue such claims in U.S. courts, we have observed that it is the rare instance where an aggrieved New Yorker can, from a practical standpoint, seek recourse pursuant to this Act. Commencing a lawsuit under the FSIA can be extremely expensive and logistically difficult, and executing a judgment can often be impossible. We believe that the State Department should continue to take the lead in pursuing such matters.

We support section 3(b), which addresses efforts directed at "Education and Encouragement of Local Law Enforcement Individuals", and wish to acknowledge the positive impact such efforts by the State Department have already had in New York City.

We do not support section 3(c) as currently worded. First, the term "interference" is vague, and we do not think such a blanket prohibition would assist the efforts of local law enforcement personnel. Clearly, the State Department would and should have a degree of involvement when a diplomat is alleged to have been involved in the commission of a crime. In fact, the New York City Police Department's Patrol Guide mandates that the U.S. Mission to the U.N. be notified when a diplomat is arrested or alleged to be involved in the commission of a crime. We believe that clarification of this prohibition is necessary so that the Department of State would be permitted to play its proper role when such incidents occur, and the local authorities would be able to request assistance on legal and other matters more typically within the expertise of the Department. Second, the clause "not covered by immunity from criminal jurisdiction of the United States under the Vienna Convention", as currently placed, can be read to modify subsections (A), (B) and (C), rather than just (C) alone. We suspect, but are not certain, that this is an interpretation that the Congress did not intend, and we recommend clarification.

We support the State Department's position, as expressed by Ambassador Roosevelt, on sections 4 and 5(a) and (b). Sections 5(c), 6 and 7 are matters between the State Department and the Congress in which we express no position.

Minimum Insurance Coverage

We do not support section 8, which would raise the minimum amount of insurance required to be carried for injury resulting from the operation of any motor vehicle, vessel, or aircraft to \$1,000,000 per incident. Our experience in New York leads us to agree with the conclusions expressed by Mr. John Condayan, Acting Director of the Office of Foreign Missions, in his March 30, 1988 testimony to this Committee, namely,

[T]he existing insurance limits can reasonably be expected to afford adequate compensation for injury to persons or property resulting from or arising out of automobile accidents...[and that] an increase in minimum coverage to \$1,000,000 would require a substantial increase in premiums, and would lead to the unavailability of insurance for some foreign mission personnel. If enacted, the section could have serious and harmful reciprocity effects on U.S. personnel abroad.

In connection with the larger picture of the automobile insurance program coordinated by OFM, we wish to add here that we are aware of several instances where underwriters failed to notify OFM of the lapse of an individual insured's policy, despite being required to do so. A subsequent claim can then be "uncovered". We would recommend consideration of additional measures that might be implemented to address these occasional "gaps" in coverage.

Liability Insurance

We support section 9. We do not dispute the State Department's finding as to the general unavailability of what it refers to as "crime insurance." However, we support the flexible language of this section which requires continued appropriate steps be taken to afford adequate compensation to injured persons. As noted above at page 5, we do not believe that the Foreign Sovereign Immunities Act provides a meaningful avenue of recourse in these cases.

Diplomatic Pouch

We have reviewed section 10, which speaks about the diplomatic pouch. Clearly, the City has an interest in ensuring that the pouch is not used for transport of weapons and other contraband. We appreciate the State Department's expressed view that "on balance...our interest as a sender requires that we seek, to the maximum extent possible, to preserve the integrity of the pouch", and that use of the diplomatic pouch "is vital to the operations of our missions abroad and the accomplishment of our foreign policy and national security objectives." If, therefore, the Congress

has in mind at this time implementation of specific measures which could result in adverse reciprocity consequences or be deemed to violate our international treaty obligations, we would oppose section 10. However, if section 10 is intended primarily to express Congress' wish for ongoing review, we would support section 10 with a recommendation that the word "will" in line 10 be replaced with the words "seek to." We believe that requiring periodic review of these policies is prudent, and that the language of section 10 as modified, is sufficiently broad so as to leave the President with enough discretion to reject "measures" deemed inappropriate.

Finally, I wish to refer briefly to two points made in the State Department's earlier testimony. First, we agree with the suggestion made by Ambassador Roosevelt to grant the various functions contemplated by the bill generally to the Secretary of State for delegation of responsibilities as he deems necessary and appropriate. Our experience with the Office of Protocol and the Office of Foreign Missions has been positive, and absent some specific finding to the contrary, we do not see the need for legislative reorganization. Second, the bill's reference to the Vienna Convention on Diplomatic Relations as the source of immunity is too narrow to cover the range of persons we suspect that Congress seeks to cover in this legislation. As the State Department correctly points out, "under bilateral and multilateral agreements and customary international law, certain other personnel are entitled to this immunity." We would, therefore, recommend amending the definition in section 3(e) and all related sections to cover this broader category of persons.

In closing, I wish to express my appreciation for this opportunity to present New York City's views on these matters. We welcome the Congressional interest in this area and look forward to working with you in making constructive changes.